

**MINUTES  
of the  
SECOND MEETING  
of the  
RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE**

**August 27-28, 2003  
Room 322, State Capitol  
Santa Fe**

The second meeting of the Radioactive and Hazardous Materials Committee was called to order by Representative John A. Heaton, chair, at 9:35 a.m. in Room 322 at the State Capitol.

**PRESENT**

Rep. John A. Heaton, Chair  
Sen. Richard C. Martinez, Vice Chair  
Rep. Donald E. Bratton  
Sen. Phil A. Griego  
Rep. Manuel G. Herrera  
Sen. Don Kidd (August 27)  
Sen. Carroll H. Leavell  
Rep. Antonio Lujan  
Rep. Pauline J. Ponce  
Rep. Jeannette O. Wallace

**ABSENT**

Sen. Mary Jane M. Garcia  
Sen. Gay G. Kernan

**Advisory Members**

Rep. Thomas A. Anderson  
Sen. Clinton D. Harden, Jr. (August 28)  
Rep. Avon W. Wilson

Sen. William H. Payne  
Sen. John Pinto

(Attendance dates are noted for members not present for the entire meeting.)

**Staff**

Maha Khoury  
Elizabeth Holmes

**Guests**

The guest list is in the meeting file.

**Wednesday, August 27**  
**Committee Business**

Representative Heaton welcomed committee members and guests. Committee members introduced themselves. Representative Heaton invited Douglas Meiklejohn to speak.

### **Amigos Bravos and Mining Impact Communication Alliance**

Francisco Apodaca stated that his and his staff's experience with the New Mexico Department of Environment (ED) has been good. ED is helpful and knowledgeable. The problems he sees are not at the staff level but at the decision-making and administrative levels, such as in negotiations with Phelps Dodge. He feels that a lot of decisions are politically driven and are not based on the best science as set out by the staff. A discussion ensued on the agreement between the state and Phelps Dodge.

### **Chaparral Community Health Council**

Jean Garcia spoke on issues with the landfill permit in Chaparral granted by ED to Rhino Environmental Services, Inc. She discussed problems with ED's public hearing process and ED's apparent lack of concern for community and citizen input. Chaparral has three other landfills. She stated that Chaparral is a poor, minority community that is being discriminated against. Representative Lujan stated that he was present at part of the hearing complained about and agreed that citizen and community voices are not heard. Tracy Hughes, general counsel for ED, stated that ED does not have any rules on economic or community impacts and is required by law to grant permits as long as zoning and local laws allow. ED is looking for ways to change this. A discussion developed regarding environmental justice. Derrith Watchman-Moore, deputy secretary of ED, stated that the issue is being looked at nationally and in New Mexico. ED is beginning a study in October on stakeholder community groups and will have a national expert speak on environmental justice. After the study, recommendations for change in legislation may be made. Representative Heaton asked ED to address the Chaparral and Questa mine issues and submit a report to the committee.

### **Southwest Organizing Project**

Robby Rodriguez discussed air quality issues related to Intel. He feels the air permit is not enforceable and that there are no emission limits. He stated that the community wants to participate and be included in the discussions and hearings but that ED stifles the process. Committee members questioned Mr. Rodriguez about the scientific basis, if any, for his claims on air emissions by Intel.

### **Blancett Ranches and Oil and Gas Accountability Project**

Tweeti Blancett, a rancher, described the wealth of natural resources in New Mexico; for example, over \$2.4 billion in resources was extracted and exported from the northwestern part of the state. She stated that New Mexico has over 35,000 natural gas wells with compressors that are totally unregulated. These wells affect the watershed and cause erosion, air pollution and surface damage problems. Ranchers are coming together with environmentalists on oil and gas well issues. Many companies that drill gas are not local and are not regulated. Problems are starting to brew in this area. A discussion ensued on the nature of the relationship between states on environmental issues. The committee requested ED to provide a short brief on the nature of state-to-state relationships.

### **New Mexico Cattle Growers' Association, New Mexico Farm and Livestock Bureau and Dairy Producers of New Mexico**

Caren Cowan of the New Mexico Cattle Growers' Association discussed ED hearings and the arduous task of the triennial review. Cecilia Abeyta of the New Mexico Farm and Livestock Bureau stated that the economic value of agriculture in New Mexico is \$3.51 billion. It is regulated for clean air and water and the bureau supports those regulations. Members of the bureau would like to participate in the process of developing regulations and making policy. Sharon Lombardi of the Dairy Producers of New Mexico discussed the economic impact of the dairy industry and described the various state agencies that regulate the industry. She described ED's regulation of dairy. Dairy producers would like to be involved in the process. It would be easier for the industry if state and federal regulations were combined into one process. A discussion took place on ground water regulations and water quality, on using manure as biomass and on streams. The committee requested ED to brief the stream issues.

### **New Mexico Cotton-Ginners' Association**

Richie Wilson, president, and Ed Hughs, United States Department of Agriculture, provided an update on House Bill 192. They have been meeting with ED on regulations since the bill was signed into law and have had excellent cooperation. Some of the issues they are working with are: modeling, developing background information for the environmental improvement board (EIB) January meeting, demonstrating compliance with federal and state standards and addressing pollutant impacts from cotton gins.

### **New Mexico Oil and Gas Association (NMOGA) and Navajo Refining**

Deborah Seligman, Louis Rose and another representative from NMOGA discussed how the association and its members are committed to protecting public health and the environment. Regulations and policies must consider industry input and identify goals while leaving the "how" to the industry. They discussed volatile organic compounds (VOCs), ozone level issues and the task force in northwestern New Mexico. They stated the industry's position on the VOC and ozone level issue, including the burdens on the industry. The association has had discussions with ED and believes it can work with ED to draft the right rules and policies. Phillip Youngblood of Navajo Refining supported the NMOGA. Navajo Refining is regulated by the Oil Conservation Division of the Energy, Minerals and Natural Resources Department as well as ED. Its relationship with ED is good, much better than it was three or four years ago. Mr. Youngblood then gave a more detailed description of what Navajo Refining does, its interactions with the various bureaus in ED and its compliance with the consent decree. Some staff at ED are very qualified, others are not. If ED had more funding, it could recruit more qualified people. A discussion ensued on the need for better funding for ED so it can hire and retain technical staff and qualified people. Mr. Rose discussed with the committee the problem with the EIB and the Water Quality Control Commission (WQCC) having lay members who do not understand a lot of science and not having an independent scientific staff. They need to have more accountability. They are unpredictable. Also, the turnover problem at ED is expensive to the industry. Representative Heaton suggested that ED, the industry and the environmentalists each do a brief on this issue so the legislature can better understand the problems.

### **Committee Business**

The committee approved the minutes of the last meeting and recessed for lunch from 12:25 p.m. to 1:45 p.m.

### **Municipal League and New Mexico Association of Counties**

Dennis Holmberg, Lea County manager, discussed landfill issues and procedures. The county has a good relationship with ED. ED inspects on a regular basis and, due to its help, the county has a profitable landfill. ED has also helped with convenience centers. Les Montoya, San Miguel County manager and member of Sangre de Cristo Solid Waste Authority, described how ED helped with Mora County's solid waste system and stated that ED is fair and consistent and communicates well on compliance issues. He then described the problem of illegal dump sites on private property. Robert Gallegos, New Mexico Municipal Environmental Quality Association, described the five topics of immediate concern to the association, namely, the federal Safe Drinking Water Act, the new arsenic standard, public health security and bioterrorism, WQCC's standard for uranium and New Mexico operator certification. He went over his presentation as set out in the meeting file. Mark Turnbough of Waste Connections, Inc., helped chair the governor's transition team for ED. He described the transition process. The team found ED to be underfunded and understaffed and found problems with the office of general counsel. Things are starting to shape up. There is a big meeting of the entire department and problems are getting addressed. General counsel is more aggressive and is making decisions faster. The hearing process should be looked at more. A discussion ensued on the hearing process, problems in procedure and appeals and de novo hearings.

### **Intel Corporation**

Barbara Brazil and Bill Westmoreland stated that Intel's primary interaction with ED is with the Air Quality Bureau. The process needs to be better identified and the timing needs to be predictable. ED is making progress in understanding the technical and complicated technology that Intel is involved in. A discussion took place on the types and amounts of chemicals released by Intel and how Intel can respond to the concerns of the community and be more transparent.

### **New Mexico Homebuilders' Association**

Jack Milarch, executive vice president, discussed septic tank issues and how ED may be understaffed. The dedicated fund for septic tank issues does not seem to be applied there. ED needs to address and clean up old and noncompliant septic tank systems. The association has members who have put in long hours and worked with ED. Another issue is storm water runoff subjecting members of the association to fines from Texas-based U.S. Environmental Protection Agency (EPA) inspectors. They seem to be caught between overworked and understaffed ED and federal regulators with a bad attitude. Ken Smith, ED, stated that ED was expanding its septic tank program. ED was asked to respond as to whether earmarked funds are being used for the purpose created.

### **New Mexico Petroleum Marketers' Association**

Rueben Baca, executive director, stated that ED regulates under- and above-ground storage tanks. It had a backlog but is catching up. A discussion took place on the underground storage tank inspection program.

### **SW Dry-Cleaning Association**

Troy Bradley of Comet Cleaners gave some personal history and discussed how dry-cleaning chemicals are mixed. ED is professional, knowledgeable and handles things well. The association deals with the Air Quality Bureau. Smaller operations seem to have more problems with chemical use and disposal and may not be as inspected as the larger companies.

### **Recess**

The committee recessed at 4:10 p.m.

### **Thursday, August 28**

The committee reconvened at 9:05 a.m. in Room 317 at the State Capitol.

### **Association of Commerce and Industry**

J.D. Bullington and Richard Virtue requested that House Bill 655, carried by Representative Heaton, be reintroduced to amend the Air Quality Act to eliminate the requirement of a second de novo hearing. A discussion on the bill, present procedures and costs ensued between Mr. Virtue, committee members, Secretary of Environment Ron Curry and Tracy Hughes, general counsel to ED. ED is willing to compromise and work with business and environmental groups. A second issue discussed by Mr. Virtue was conflict resolution before ED, especially when there is a change in policy or interpretation. Examples were given. An interim procedure is needed, perhaps an informal hearing or mediation. Mr. Virtue further suggested that the statute of limitations imposed on the Air Quality Act in 2001 should be applied to the Water Quality Act and the Hazardous Waste Act. ED is administratively recognizing a one-year limitation.

### **New Mexico Restaurant Association**

Carol White, executive director, stated that members of her association work well with ED. ED is very professional but its employees are overworked and underpaid. Last session, the association supported a fee increase for ED. Three thousand restaurants are inspected across the state. A discussion took place on earmarked funds, bad cash management and how lack of adequate funding forces the department to use funds for other than their intended purpose. Rick Martinez, Administrative Services Division director, ED, explained problems with special funds and stated that there are around 50 vacant positions in ED due to lack of funding. ED needs general fund money to fill these positions and to match federal funding.

### **Update on Superfunds**

George Schuman, ED, superfund program director, went over the handout describing the 12 superfunds in New Mexico, their causes, locations, progress of cleanup efforts and cleanup

goals, processes and measurement. Discussions ensued on specific superfund sites, such as those in Espanola and Roswell, on dry-cleaning solvents and on liability of property owners. Mr. Schuman described the decrease in federal funding for superfund sites nationally. Representative Ponce moved to send letters on the superfund sites individually and as a committee to congressional delegates. Senator Martinez seconded the motion. ED will draft the letters.

### **New Mexico Mining Association**

Mike Bowen, executive director, stated that the mining industry is regulated in numerous ways by ED, including air, water, financial, waste, storage tanks and remediation, and is regulated by other agencies as well. Environmental regulation has a substantial economic impact on mining and requires hundreds of millions of dollars from investors. It is crucial for ED to hire and retain qualified professionals, otherwise there are delays and problems to the industry. The association would support last session's House Bill 655, streamlining the appeal process and eliminating de novo hearings. It sees problems with EIB and WQCC. The industry needs to know what the rules are up front. The New Mexico Mining Act is vague. It is very difficult for the mining industry to get insurance or surety bonds for reclamation. A discussion ensued on Chino Phelps-Dodge and on the negotiations and possible agreement between it and ED. ED updated the committee about the MolyCorp mine near Questa.

The committee recessed for lunch from 12:05 p.m. to 1:20 p.m.

### **Waste Isolation Pilot Project (WIPP) Trans-Uranic Waste Characterization**

Dr. Ines Triay, WIPP manager, described the three waste regulators for WIPP, namely the EPA, the Nuclear Regulatory Commission and ED. She discussed the different kinds of waste and their associated risks. The experience gained since the opening of WIPP has shown that some tests that have been conducted are unnecessary. Dr. Triay went over her handout and explained U.S. Senate Bill 1424 relating to the characterization of waste, testing and limiting waste confirmation. WIPP will save around \$700 million by cutting down waste confirmation tests that are unnecessary and costly. Discussions took place about how WIPP waste should be tested at WIPP and not in Idaho, how the unnecessary transportation of waste causes more risk and the difficulty for ED in monitoring the waste within its jurisdiction.

### **Los Alamos National Laboratory (LANL)**

Beverly Ramsey, Barbara Stine and Tori George went over various handouts and stated that safety, security and compliance are top priorities. LANL has a new director and a new organization, Environmental Management Services. Radioactive air emissions have been reduced to 20 percent of what they were in 1990 and pollution outfalls have been reduced by 85 percent. LANL is committed to working with ED and with New Mexico. LANL continues to examine and implement risk reduction strategies and to reduce waste production. It is committed to openness and transparency on public health issues. Dave McInroy stated that \$1.4 billion has been allocated for an environmental restoration project. So far, one-half of that money has been used and 400 acres have been transferred to Los Alamos County and remediated. Chris Del Signore went over his handout and discussed the waste disposition program and showed that

much of what used to be below-grade transuranic waste is now above-grade transuranic waste. Tony Stanford explained the facility and the waste operations division and its duties. He also described how low-level waste is disposed of in pits in Area G, which is a category 2 nuclear facility. Ms. Ramsey described LANL's working relationship with ED on stream water, storm water, monitoring of watershed and the Resource Conservation and Recovery Act (RCRA) permit. A draft permit should be finished in the fall of 2003. She briefly described the status of the lawsuit, how it is now in mediation and how they have gone through a series of stays that are still in effect. LANL is close to reaching an agreement with ED on a final order. After the lawsuit is over, LANL is expecting funds for cleanup. Discussions took place on procedures for spills and actions taken after the Cerro Grande fire.

### **New Mexico Department of Environment**

James Bearzi, Sandra Martin and Charles Lundstrom presented ED's perspective on LANL. Mr. Bearzi went over his handout, explaining RCRA as it relates to LANL, the permitting process, timing and other RCRA issues. He stated that the lawsuit began in November 2002 when ED issued a Section 13 order under state law finding LANL guilty of imminent and substantial endangerment. Thereafter, the Department of Justice, EPA and the U.S. Department of Energy sued New Mexico. Six lawsuits were filed against the state; four were due to the Section 13 order and two were a response to another ED document put forth after the order. Now, there is a stay in the lawsuits until October 2003. ED has seven full-time positions to deal with LANL. The relationship is not bad but it is difficult as LANL and ED have different goals and focuses. A discussion ensued on secrecy and how ED is still struggling with the nature and extent of the problems at LANL. It is difficult to know what cleanup is required when the nature, extent and source of the problems are not known. The order issued by ED deals more with the nature and extent of the problems than it does with remediation. A discussion took place on Senate Bill 202, which amended the Hazardous Waste Act. ED is developing regulations in response to the passage of the bill. Ms. Ramsey spoke about the necessity of adequate staff in ED to understand the complexities at LANL and to make decisions. Ms. Ramsey and Mr. Bearzi agree that LANL is underfunded by the federal government compared with other federal facilities and with respect to environmental issues and cleanup. Committee members encouraged LANL and ED to continue mediation and to come to an agreement.

### **Adjournment**

The meeting adjourned at 5:30 p.m.